



Paper No.

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OFFICE OF PETITIONS

In re Application of
Dorn, et al.
Application No. 09/881,492
Filed: June 14, 2001
Attorney Docket No. P97,1389 02

DECISION ON
PETITION

~~In re Application of
Dorn, et al.
Application No. 08/883,303
Filed: June 27, 1997
Attorney Docket No. P97.1389~~

This is a decision on the "Request for Corrected Filing Receipt" filed August 27, 2001. This request is properly treated as a petition relating to the filing date accorded to an application under 37 CFR 1.53(b)¹.

Application number 09/881,492 ("492") is a Continuation-In-Part Application of application number 08/883,303 ("303")², presently accorded a filing date of June 28, 1997. Petitioner maintains that parent application '303 was filed on June 27, 1997, and that the Filing Receipt mailed August 14, 2001 in continuing application number '492, showing a filing date of June 28, 1997 in the parent application is in error. With the instant Request for Corrected Filing Receipt, petitioner submits copies of:

- the Filing Receipt mailed August 14, 2001;
- the postcard receipt for the '303 application stamped by the mailroom of the PTO, when the application was hand carried to the patent office, showing a filing date of June 27, 1997;
- a second postcard returned to applicants by mail showing a filing date of June 26, 1997 for '303; and
- the Request for Corrected Filing Receipt filed on December 4, 1997, (certificate of mailing date pursuant to \$1.8) in parent application '303.

¹ See also MPEP 506.02

² 08/883,303 was abandoned effective June 15, 2001.

Pursuant to §1.181(f)³, any petition filed more than 2 months after the action complained of may be dismissed as untimely. The action complained of here is the according of a filing date of June 28, 1997, to application '303. To show timeliness, petitioner has submitted a copy of a Request for Corrected Filing Receipt, that petitioner maintains was filed on December 4, 1997. A review of the paper reveals that it contains a §1.8(a) certificate of mailing, attesting to the paper being placed in the mail on December 4, 1997. However, a review of the application file for '303 indicates that this paper was never received in the Office. Thus, it is significant that in order to obtain the benefit of a certificate of mailing date under §1.8, where a paper is not received in the Office, an applicant must, among other things, inform the Office of the mailing or transmission of correspondence under §1.8 promptly after becoming aware that the Office has no evidence of receipt of the correspondence⁴. In this instance, several years passed without petitioner informing the Office, by resubmitting the request. Given these facts, the Request for Corrected Filing Receipt filed August 27, 2001, could be, but will not under the circumstances be, considered untimely. Petitioner is advised that in the future such a delay in informing the Office of nonreceipt of a petition may result in the resubmitted petition being dismissed as untimely, without consideration on the merits.

In regards to the merits here, the postcard evidence is controlling. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. The filing date of an application for patent filed under §1.53(b) is

³ (f) ... Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

⁴ In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, ...and the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

the date of receipt in the Office of the application⁵. The postcard receipt identifies this application by attorney docket number, itemizes the correspondence comprising the application currently accorded a filing date of June 28, 1997 as enclosed, and bears a United States Patent and Trademark Office date-stamp of June 27, 1997. Thus, petitioner has provided *prima facie* evidence that application '303 was filed on June 27, 1997.

In view thereof, the petition is GRANTED.

Given the basis for granting the petition, no petition fee has been charged.

The '492 and '303 application files are both being forwarded to OIPE for:

- correction of the filing date in application number 08/883,303 to June 27, 1997;
- issuance of a corrected filing receipt in application number 09/881,492, indicating a filing date for parent application number 08/883,303 of June 27, 1997; and
- processing of the signed declaration (with surcharge for late filing) filed August 27, 2001, in application number '492, in response to the "Notice to File Missing Parts" mailed August 14, 2001.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

⁵ Provided that the application includes a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to \$1.71 and at least one claim pursuant to \$1.75, and any drawing required by \$1.81(a). The contents of this application are not at issue on instant petition.